



UNITED STATES PATENT AND TRADEMARK OFFICE

UNITED STATES DEPARTMENT OF COMMERCE

United States Patent and Trademark Office

Address: COMMISSIONER FOR PATENTS

P.O. Box 1450

Alexandria, Virginia 22313-1450

www.uspto.gov

APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/014,720	12/11/2001	Ari Shaer	107.103	4119
22846 7590 06/09/2009 BRIAN ROFFE, ESQ 11 SUNRISE PLAZA, SUITE 303 VALLEY STREAM, NY 11580-6111				
EXAMINER				
LEVINE, ADAM L				
ART UNIT		PAPER NUMBER		
3625				
MAIL DATE		DELIVERY MODE		
06/09/2009		PAPER		

Please find below and/or attached an Office communication concerning this application or proceeding.

The time period for reply, if any, is set in the attached communication.

**Advisory Action
Before the Filing of an Appeal Brief**

Application No.

10/014,720

Applicant(s)

SHAER, ARI

Examiner

ADAM LEVINE

Art Unit

3625

--The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

THE REPLY FILED 12 May 2009 FAILS TO PLACE THIS APPLICATION IN CONDITION FOR ALLOWANCE.

1. ☒ The reply was filed after a final rejection, but prior to or on the same day as filing a Notice of Appeal. To avoid abandonment of this application, applicant must timely file one of the following replies: (1) an amendment, affidavit, or other evidence, which places the application in condition for allowance; (2) a Notice of Appeal (with appeal fee) in compliance with 37 CFR 41.31; or (3) a Request for Continued Examination (RCE) in compliance with 37 CFR 1.114. The reply must be filed within one of the following time periods:

- a) ☒ The period for reply expires 3 months from the mailing date of the final rejection.
b) ☐ The period for reply expires on: (1) the mailing date of this Advisory Action, or (2) the date set forth in the final rejection, whichever is later. In no event, however, will the statutory period for reply expire later than SIX MONTHS from the mailing date of the final rejection.
Examiner Note: If box 1 is checked, check either box (a) or (b). ONLY CHECK BOX (b) WHEN THE FIRST REPLY WAS FILED WITHIN TWO MONTHS OF THE FINAL REJECTION. See MPEP 706.07(f).

Extensions of time may be obtained under 37 CFR 1.136(a). The date on which the petition under 37 CFR 1.136(a) and the appropriate extension fee have been filed is the date for purposes of determining the period of extension and the corresponding amount of the fee. The appropriate extension fee under 37 CFR 1.17(a) is calculated from: (1) the expiration date of the shortened statutory period for reply originally set in the final Office action; or (2) as set forth in (b) above, if checked. Any reply received by the Office later than three months after the mailing date of the final rejection, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

NOTICE OF APPEAL

2. ☐ The Notice of Appeal was filed on _____. A brief in compliance with 37 CFR 41.37 must be filed within two months of the date of filing the Notice of Appeal (37 CFR 41.37(a)), or any extension thereof (37 CFR 41.37(e)), to avoid dismissal of the appeal. Since a Notice of Appeal has been filed, any reply must be filed within the time period set forth in 37 CFR 41.37(a).

AMENDMENTS

3. ☒ The proposed amendment(s) filed after a final rejection, but prior to the date of filing a brief, will not be entered because
(a) ☒ They raise new issues that would require further consideration and/or search (see NOTE below);
(b) ☒ They raise the issue of new matter (see NOTE below);
(c) ☒ They are not deemed to place the application in better form for appeal by materially reducing or simplifying the issues for appeal; and/or
(d) ☐ They present additional claims without canceling a corresponding number of finally rejected claims.

NOTE: _____. (See 37 CFR 1.116 and 41.33(a)).

4. ☐ The amendments are not in compliance with 37 CFR 1.121. See attached Notice of Non-Compliant Amendment (PTOL-324).
5. ☐ Applicant's reply has overcome the following rejection(s): _____.
6. ☐ Newly proposed or amended claim(s) _____ would be allowable if submitted in a separate, timely filed amendment canceling the non-allowable claim(s).
7. ☒ For purposes of appeal, the proposed amendment(s): a) ☒ will not be entered, or b) ☐ will be entered and an explanation of how the new or amended claims would be rejected is provided below or appended.

The status of the claim(s) is (or will be) as follows:

Claim(s) allowed: _____

Claim(s) objected to: _____

Claim(s) rejected: 9-12 and 21

Claim(s) withdrawn from consideration: 1-6, 8 and 22-29

AFFIDAVIT OR OTHER EVIDENCE

8. ☐ The affidavit or other evidence filed after a final action, but before or on the date of filing a Notice of Appeal will not be entered because applicant failed to provide a showing of good and sufficient reasons why the affidavit or other evidence is necessary and was not earlier presented. See 37 CFR 1.116(e).
9. ☐ The affidavit or other evidence filed after the date of filing a Notice of Appeal, but prior to the date of filing a brief, will not be entered because the affidavit or other evidence failed to overcome all rejections under appeal and/or appellant fails to provide a showing a good and sufficient reasons why it is necessary and was not earlier presented. See 37 CFR 41.33(d)(1).
10. ☐ The affidavit or other evidence is entered. An explanation of the status of the claims after entry is below or attached.

REQUEST FOR RECONSIDERATION/OTHER

11. ☒ The request for reconsideration has been considered but does NOT place the application in condition for allowance because:
See Continuation Sheet.
12. ☐ Note the attached Information Disclosure Statement(s). (PTO/SB/08) Paper No(s). _____
13. ☐ Other: _____

/Jeffrey A. Smith/
Supervisory Patent Examiner, Art Unit 3625

Continuation of 11, does NOT place the application in condition for allowance because: Examiner has fully considered applicant's amendments and remarks. Applicant's remarks with regard to examiner's interpretation of claim 9 are correct, however, this does not alter the basic result of the previous amendment to claim 1 (and now claim 9). In light of the current amendments both independent claims would now be drawn to the same invention if entered. However, as previously noted, this invention is not the originally elected invention.

With regard to claim 9, the phrase "manner of payment," was not used or defined in the specification, though it is clearly intended by applicant to have a specific meaning. This has led to a lack of clarity and has in turn resulted in confusion. Arguing in favor of one specific meaning after the fact when the phrase is not described (or even used) in the specification is not helpful. The examiner now however appreciates that the phrase could be interpreted as argued by the applicant. Rather than a new matter objection, this would therefore result in an objection to the specification for failing to provide proper antecedent basis for the claimed subject matter. See 37 CFR 1.75(d)(1) and MPEP § 608.01(o).

With regard to both claims 1 and 9, the invention originally arranged payments through the intermediary. The previous version of claim 9 still would have allowed this interpretation regardless of "manner of payment." The previous amendment of claim 1 and the current amendment of claim 9 (if entered) result in the payment going to the organizer rather than the intermediary. Applicant is blurring the distinction between the two and the organizer may have some control over the intermediary, however, if they are not distinct elements then a fundamental aspect of the invention is lost. It is examiner's understanding that the second price is the total amount including both the first price and the additional benefit to the organizer, yet both independent claims now pay the full second price to the organizer rather than the intermediary. Claim 9: "upon payment of the second price by the consumers other than the organizer to the organizer..."

Claim 1: "providing the organizer with funds from each gift giver equal to the second price...". Claim 9 further generates a benefit equal to the difference between the first and second price, while paying the full second price to the organizer. This would be double dipping and examiner is fairly certain that this is not applicant's intent.